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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**MARISA LAINER, individually and
on behalf of all others similarly
situated**

Plaintiff,

vs.

UBER TECHNOLOGIES INC.,

Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]
2. WILLFUL VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT [47 U.S.C.
§227 ET SEQ.]

(Amount to exceed \$25,000)

DEMAND FOR JURY TRIAL

INTRODUCTION

1. MARISA LAINER ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of UBER TECHNOLOGIES INC. ("Defendant"), in negligently and knowingly contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer

1 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
2 Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as
3 to herself and her own acts and experiences, and, as to all other matters,
4 upon information and belief, including investigation conducted by his
5 attorneys.

6 JURISDICTION AND VENUE

- 7
- 8 2. Jurisdiction is proper under 28 U.S.C. § 1332 because Plaintiff seeks up to
9 \$1,500 in damages for each call in violation of the TCPA, which, when
10 aggregated among a proposed class number in the tens of thousands,
11 exceeds the \$5,000,000 threshold for federal court jurisdiction. Further,
12 Plaintiff alleges a national class, which will result in at least one class
13 member belonging to a different state than that of Defendant, providing
14 jurisdiction under 28 U.S.C. Section 1332. Therefore, both elements of
15 diversity jurisdiction under the Class Action Fairness Act of 2005
16 (“CAFA”) are present, and this Court has jurisdiction.
- 17 3. Venue is proper in the United States District Court for the Central District
18 of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because
19 Defendant is subject to personal jurisdiction in the County of Los Angeles,
20 State of California.

21 PARTIES

- 22 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
23 the State of California. Plaintiff is, and at all times mentioned herein was, a
24 “person” as defined by 47 U.S.C. § 153 (10).
- 25 5. Plaintiff is informed and believes, and thereon alleges, that Defendant is,
26 and at all times mentioned herein was, a corporation whose primary
27 corporate address is in California. Defendant, is and at all times mentioned
28 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153

1 (10). Defendant provides transportation services to tens of thousands of
2 consumer nationwide. Plaintiff alleges that at all times relevant herein
3 Defendant conducted business in the State of California and in the County
4 of San Francisco, and within this judicial district.

5 **FACTUAL ALLEGATIONS**

- 6 6. At all times relevant, Plaintiff was a citizen of the State of California.
7 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
8 47 U.S.C. § 153 (10).
9
10 7. Defendant is, and at all times mentioned herein was, a corporation and a
11 “person,” as defined by 47 U.S.C. § 153 (10).
12
13 8. At all times relevant Defendant conducted business in the State of
14 California and in the County of Los Angeles, within this judicial district.
15
16 9. On or about October of 2015, Defendant began using Plaintiff’s cellular
17 telephone for the purpose of sending Plaintiff spam advertisements and/or
18 promotional offers, via text message, including a text message sent to and
19 received by Plaintiff on or about October 26, 2015.
20
21 10. On October 26, 2015, Plaintiff received a text message from Defendant that
22 read:

23
24 Charlie is inviting you to drive with Uber! Sign up now and
25 get up to \$300 when you start driving: <http://ubr.to/1OzMxRh>
26
27

- 28 11. The text message did not include an opt-out clause.
12. The text message was sent from phone number 1(205)-831-0335.
13. When dialing back the number above, one is greeted with an automated
voice that states “Uber does not accept phone calls at this time.” The call
then is automatically disconnected. Such an automated response is

1 indicative of technology that constitutes an “automatic telephone dialing
2 system,” (“ATDS”) as defined by 47 U.S.C. § 227 (a)(1) as prohibited by
3 47 U.S.C. § 227 (b)(1)(A).

4 14. Prior to October 26, 2015, Plaintiff had never engaged with Defendant to be
5 a potential driver nor had Plaintiff ever requested Defendant to send auto
6 texts for that purpose.

7 15. The text message placed to Plaintiff’s cellular telephone was placed via an
8 “automatic telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. §
9 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

10 16. The telephone number that Defendant, or its agent messaged was assigned
11 to a cellular telephone service for which Plaintiff incurs a charge for
12 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

13 17. These telephone calls constituted calls that were not for emergency
14 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

15 18. As of October 26, 2015, Plaintiff did not provide Defendant or its agents
16 with prior express consent to receive unsolicited text messages, pursuant to
17 47 U.S.C. § 227 (b)(1)(A).

18 19. These messages by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).

20 **CLASS ACTION ALLEGATIONS**

21 20. Plaintiff brings this action on behalf of herself and on behalf of and all
22 others similarly situated (“the Class”).

23 21. Plaintiff represents, and is a member of the Class, consisting of all persons
24 within the United States who received any unsolicited text messages and/or
25 any other unsolicited text messages from Defendant without prior express
26 consent.

27 22. Defendant and its employees or agents are excluded from the Class.
28 Plaintiff does not know the number of members in the Class, but believes

1 the Class members number in the tens of thousands, if not more. Thus, this
2 matter should be certified as a Class action to assist in the expeditious
3 litigation of this matter.

4 23. Plaintiff and members of the Class were harmed by the acts of Defendant in
5 at least the following ways: Defendant, either directly or through its agents,
6 illegally contacted Plaintiff and the Class members via their cellular
7 telephones by using an unsolicited text message, thereby causing Plaintiff
8 and the Class members to incur certain cellular telephone charges or
9 reduced cellular telephone time for which Plaintiff and the Class members
10 previously paid, and invading the privacy of said Plaintiff and the Class
11 members. Plaintiff and the Class members were damaged thereby.

12 24. This suit seeks only damages and injunctive relief for recovery of economic
13 injury on behalf of the Class, and it expressly is not intended to request any
14 recovery for personal injury and claims related thereto. Plaintiff reserves
15 the right to expand the Class definition to seek recovery on behalf of
16 additional persons as warranted as facts are learned in further investigation
17 and discovery.

18 25. The joinder of the Class members is impractical and the disposition of their
19 claims in the Class action will provide substantial benefits both to the
20 parties and to the court. The Class can be identified through Defendant's
21 records or Defendant's agents' records.

22 26. There is a well-defined community of interest in the questions of law and
23 fact involved affecting the parties to be represented. The questions of law
24 and fact to the Class predominate over questions which may affect
25 individual Class members, including the following:

- 26
27 a) Whether, within the four years prior to the filing of this Complaint,
28 Defendant placed any unsolicited text messages (other than a text

1 message made for emergency purposes or made with the prior
2 express consent of the called party) to a Class member using any
3 automatic telephone dialing and/or texting system to any telephone
4 number assigned to a cellular telephone service;

5 b) Whether Plaintiff and the Class members were damaged thereby, and
6 the extent of damages for such violation; and

7 c) Whether Defendant should be enjoined from engaging in such
8 conduct in the future.

9
10 28. As a person that received at least one unsolicited text message without
11 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
12 of the Class. Plaintiff will fairly and adequately represent and protect the
13 interests of the Class in that Plaintiff has no interests antagonistic to any
14 member of the Class.

15 29. Plaintiff and the members of the Class have all suffered irreparable harm as
16 a result of the Defendant's unlawful and wrongful conduct. Absent a class
17 action, the Class will continue to face the potential for irreparable harm. In
18 addition, these violations of law will be allowed to proceed without remedy
19 and Defendant will likely continue such illegal conduct. Because of the size
20 of the individual Class member's claims, few, if any, Class members could
21 afford to seek legal redress for the wrongs complained of herein.

22 30. Plaintiff has retained counsel experienced in handling class action claims
23 and claims involving violations of the Telephone Consumer Protection Act.

24 31. A class action is a superior method for the fair and efficient adjudication of
25 this controversy. Class-wide damages are essential to induce Defendant to
26 comply with federal law. The interest of Class members in individually
27 controlling the prosecution of separate claims against Defendant is small
28 because the maximum statutory damages in an individual action for

1 violation of privacy are minimal. Management of these claims is likely to
2 present significantly fewer difficulties than those presented in many class
3 claims.

- 4 32. Defendant has acted on grounds generally applicable to the Class, thereby
5 making appropriate final injunctive relief and corresponding declaratory
6 relief with respect to the Class as a whole.

7
8 **FIRST CAUSE OF ACTION**
9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**
10 **PROTECTION ACT**
11 **47 U.S.C. § 227 ET SEQ.**

- 12 33. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

- 14 34. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple negligent violations of the TCPA, including but not limited to each
16 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

- 17 35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
18 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
19 damages, for each and every violation, pursuant to 47 U.S.C. §
20 227(b)(3)(B).

- 21 36. Plaintiff and the Class are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**
24 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
25 **TELEPHONE CONSUMER PROTECTION ACT**
26 **47 U.S.C. § 227 ET SEQ.**

- 27 37. Plaintiff incorporates by reference all of the above paragraphs of this
28 Complaint as though fully stated herein.

38. The foregoing acts and omissions of Defendant constitute numerous and
multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above-cited provisions of 47 U.S.C. §
2 227 et seq.

3 39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
4 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
5 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
6 227(b)(3)(C).

7 40. Plaintiff and the Class are also entitled to and seek injunctive relief
8 prohibiting such conduct in the future.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The
12 Class members the following relief against Defendant:

13 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE**
14 **TCPA, 47 U.S.C. § 227 ET SEQ.**

15 41. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
16 Plaintiff seeks for himself and each Class member \$500.00 in statutory
17 damages, for each and every violation, pursuant to 47 U.S.C. §
18 227(b)(3)(B).

19 42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
20 conduct in the future.

21 43. Any other relief the Court may deem just and proper.

22 **SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL**
23 **VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.**

24 44. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
25 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in
26 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
27 227(b)(3)(C).

1 45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
2 conduct in the future.

3 46. Any other relief the Court may deem just and proper.
4

5 **TRIAL BY JURY**

6 47. Pursuant to the seventh amendment to the Constitution of the United States
7 of America, Plaintiffs are entitled to, and demand, a trial by jury.
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10 Respectfully submitted this 28th day of December, 2015.
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13
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15 Todd M. Friedman, Esq.
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17 Attorney for Plaintiff
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